IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

-

WRIT PETITION NO : 15201 of 1992

Between:

N.Hemasundara Babu, S/o.N.J.Sundaram, R/o.Alamuru Village, Alamuru Mandal, East Godavari District.

... PETITIONER

AND

1. The Superintending Engineer, Operation, A.P. State Electricity Board, Rajahmundry.
2. The Divisional Engineer, Operation, A.P.State Electricity Board, Kothapeta, East Godavari District.
3. The Addl. Assistant Engineer, Operation (Town), Razole, East Godavari District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ order or direction, more particularly one in the nature of Mandamus, declaring that the impugned proceedings issued by the first respondent under Proc.Memo.No.Ad/C2/F.No.14/88 D.No.527/91 dt.27-12-1991 and the consequential recovery orders of the second respondent under Memo.No.DEE/O/KPT/Adm.U/D.No.1786/92 dated 26-6-1992 as arbitrary, illegal and contrary to law and set aside the same.

Counsel for the Petitioner: MR.P.MURALI

Counsel for the Respondent No1 to 3.: MR.S.RAVINDRANATH, Standing Counsel for A.P.Transco

The Court made the following:

Oral Order:

1. The petitioner worked as an Assistant Lineman in the respondent —Electricity Board. He was issued a show cause notice dated 29-11-1988 calling for his explanation on the allegations that he cannot climb the electric pole for replacement of bulbs and rectification of the wires, that he collected Rs.40/- each from 12 prospective consumers for release of service connections and he is indifferent in discharge of his duties. The Divisional Engineer, being not satisfied with the explanation, issued a Memo on 14-3-1989 placing the petitioner under suspension. The Assistant Divisional Engineer (Operations), Kothapet, East Godavari District was appointed as an enquiry officer to conduct regular departmental enquiry against the petitioner. The enquiry officer issued a Charge Memo on 17-7-1989 calling for his explanation. The petitioner submitted his explanation on 5-8-1989 and the enquiry officer after conducting a regular enquiry submitted a report on 9-10-1989 holding that the charges framed against the petitioner were not proved. The disciplinary authority accepted the report of the enquiry officer through the proceedings dated 5-12-1989 exonerating the petitioner of all the charges framed against him. The disciplinary authority while ordering reinstatement of the petitioner observed that the period of suspension from 16-3-1989 to 11-10-1989 should be treated as “on duty” with all attendant benefits. Subsequently, the petitioner made several representations to the concerned authorities to pay the difference of wages for the period of suspension. While the matter stood thus, the petitioner received a Memo dated 7-9-1991 from the first respondent under Regulation No.7 (c) of the A.P.S.E.B. Employees’ Discipline and

Appeal Regulations mentioning that he reviewed the entire case and reversed the finding of the enquiry officer and the finding of the disciplinary authority exonerating the petitioner from the charges. It was further mentioned in the said Notice that the first respondent came to a provisional conclusion that it is a fit matter to impose the penalty of "Censure" and to treat the period of suspension as "on leave" and directed the petitioner to show cause as to why the penalty of "Censure" should not be imposed. The petitioner submitted his reply. Subsequently, the first respondent passed an order dated 27-12-1991 by setting aside the order of the second respondent by observing that the petitioner was warned for the allegations leveled against him and directed to treat the period of suspension as "leave" for which the petitioner is eligible. In pursuance of the said order, the second respondent passed an order on 26-6-1992 treating the period of suspension as "leave under various heads" and for recovery of the salary drawn by the petitioner for the period of suspension in ten equal installments. The petitioner therefore approached this Court through this writ petition seeking to declare that the impugned proceedings dated 27-12-1991 passed by the first respondent and the consequential recovery orders of the second respondent dated 26-6-1992 as arbitrary, illegal and contrary to law and to set aside the same.

2. The learned counsel for the petitioner contends that when the disciplinary authority exonerated the petitioner by accepting the report of the enquiry officer who found the petitioner not guilty of the charges framed against him, the first respondent by exercising the power under Section 7 (c) of the A.P.S.E. Board Employees' Discipline and Appeal Regulations imposed the punishment of warning by setting aside the order of the disciplinary authority and treating the period of suspension as "on leave" instead of treating it as the period "on duty". Section 7 (c) of the said Regulations reads as follows:

7.

a. **Competent and appellate Disciplinary authorities:**

xxx

b. **Competency of authorities superior to disciplinary authority:**

xxx

c. Where in any case a lower authority has imposed a penalty or exonerated a member; it shall not debar a higher authority from exercising his power under this regulation in respect of the same case. The order of such higher authority shall supercede any order passed by a lower authority in respect of the same case.

d. xxx

e. xxx

3. The learned counsel submits that no doubt the first respondent as a revisional authority has power to modify the order passed by the second respondent, but sufficient opportunity ought to have been given to the petitioner before imposing the penalty by directing the disciplinary authority to conduct further enquiry, if any, required or ordering a fresh enquiry on the allegations, if any, available in addition to the allegations made against the petitioner under the charge sheet.

4. The report of the enquiry officer indicates that the persons who made complaint against the petitioner did not come forward to participate in the enquiry regarding the allegation of taking money from the prospective consumers and the indifference of the petitioner in discharging his duties. Regarding the skill of the petitioner for climbing the pole, the enquiry officer relied on the report of the Assistant Deputy Executive Engineer who certified that the petitioner was in a position to climb R.S.Joist and one PSC pole in the presence of the then Assistant Divisional Engineer, therefore, the Enquiry Officer came to the conclusion that the said allegation regarding the climbing of the pole is also not proved. When there are categorical findings from the enquiry officer, which was accepted by the disciplinary authority, the first respondent ought not have interfered with the said findings without assigning specific reasons for deferring with the report of the enquiry officer and the order of the disciplinary authority. When once the disciplinary authority exonerates the employee, it should not be reopened unless the first respondent

makes out strong circumstances by observing either procedural irregularities or lack of appreciation of the material available on record. In the absence of such observations, the order of the first respondent dated 27-12-1991 cannot sustain.

5. In the result, the writ petition is allowed. The order of the first respondent dated 27-12-1991 and the consequential order of the second respondent dated 26-6-1992 are set aside. No order as to costs.

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(Dr.G. Yethirajulu, J)

03rd November 2004

svs

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the 03rd day of November Two thousand and four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Superintending Engineer, Operation, A.P. State Electricity Board, Rajahmundry.

2. The Divisional Engineer, Operation, A.P.State Electricity Board, Kothapeta, East Godavari District.

3. The Addl. Assistant Engineer, Operation (Town), Razole, East Godavari District.

4. Mr.P. Murali, Advocate (OPUC)

5. Mr.S.Ravindranath, Advocate (OPUC)

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